

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 177 of 1981

between

SHRI KALAP NATH WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S
D.R. KUMAR BROTHERS, KHANDSA ROAD, GURGAON.

Present.—

Shri Shardha Nand for the workman

Shri S. K. Goswami, for the respondent-management

AWARD

This reference No. 177 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,— vide his order No. ID/GGN/37-81/26601, dated 26th May, 1981, under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between Shri Kalap Nath, workman and the respondent-management of M/s D.R. Kumar Brothers, Khandsa Road, Gurgaon. The term of the reference was:—

Whether the termination of service of Shri Kalap Nath was justified and in order? If not, to what relief is he entitled?

On receiving this reference, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he joined the factory on 1st September, 1976 and was removed from service 18th February, 1981 without any notice or chargesheet, which are not justified. He was working as Polisher and drawing the salary of Rs 290 per month.

The case of the respondent according to written statement is that there is no relationship of employer and employee between the claimant and the respondent and the reference is bad in law, so it should be dismissed.

On the pleadings of the parties, the following issues were framed:—

1. Whether there is relationship of employee and the employer between the parties? if so, to what effect?
2. As per reference?
3. Relief?

My findings on issues are as under:—

Issue No. 1:

Issue No. 1 is whether there is relationship between the employee and the employer? On this issue the respondent argued that as stated by Shri Sudarshan Kumar Jain partner as MW-4 and Shri Sushil Kumar Jain partner as MW-1 that he has brought the record of the factory in which the attendance register clears the position of the claimant. There is no such name in the attendance register from 1971 to 1981 and the claimant was not the employee of the factory. The claimant may be employer of the contractor because there is a contractor in the factory, who employs his workman for his purpose, and the contractor executed an agreement with the respondent factory which is Ex. M-1. The agreement is between Shri Kuber Ram and the respondent factory which is signed by the contractor and the partner of the firm Shri Sushil Kumar who has come in the Court as MW-1. He further argued that the workman filed a demand notice before the Labour Officer, Gurgaon and after proceedings the workman has stated before the Labour Officer that they have no concern with the respondent factory which is Ex. M-2. According to this statement of the workman they have no concern with the respondent and it is a proof of relationship of the claimant and the respondent. This document shows that the claimant was not the workman of the factory and the respondent has no concern with this workman. He further argued that the documents produced by the claimant i.e. from Ex. W-1 to W6 are not the genuine documents issued by the respondent factory. The partner Shri Sudarshan Kumar Jain who has come as MW-4 has denied the signature on Ex. W-3 the identity card. It is correct that ESI Card Ex. W-4 bears the code number of the factory and it is usually a practice of the firm that ESI is deducted from the workman even of the contractor's labour and the code number is given of the factory concerned, where the workman works.

So, it is not a proof that the workman was the employee of the factory. Ex. W-2 attendance card does not bear the signatures of any person of the factory which cannot be believed. Ex. W-5 Provident Fund slip produced by the workman for the year 1979-80 shows the opening balance as nil and did not prove anything more than the only Provident Fund for the year, which also cannot be believed as true document. Ex. W-6 Form No. 37 of ESI is not proved by any person, so it cannot be believed. He further argued that there are contradiction in the workman evidence and the documents produced by him. So these documents and the statement of the workman cannot be believed. The ESI register of the contractor was also checked by the ESI Inspector and the ESI was deducted by the Contractor and not by the respondent-management. The workman was not appointed by the respondent and there is no appointment letter shown or produced in the Court and there is also no termination letter with the respondent to show that the workman was terminated. So it is clear proof that the claimant was not the employee of the respondent. The claimant could not summon any record of the respondent to prove this fact that he was the employee of the respondent.

The representative of the workman argued that the workman was the employee of the respondent. The workman has produced Ex. W-1 which is admitted by the respondent in cross-examination as MW-1 that this document was issued from the respondent factory. The document is on the pad of the factory bears number 222 and bears the name of the workman Shri Kalap Nath, dated 4th April, 1974. The attendance card produced by the workman as Ex. W-2 is also admitted that the card is of the factory but it did not bear the signature of the official of the factory. He further argued that the respondent company issued such type of identity card which are produced and this document bears the date May, 1976 relating to Shri Briz Mohan clears that the workman in the employment of the respondent in May, 1976. He further argued that the identity card Ex. W-3 is of the same company which bears the card number and signature of Sudarshan Kumar Jain. Shri Man Singh witness of the respondent as MW-3 has identified the signature of Shri Sudarshan Kumar Jain on the identity card is issued from the respondent factory. Shri Man Singh MW-3 has also admitted the handwriting on Ex. W-2 attendance card. He has stated in his cross-examination that he wrote this in his own hand in the year May, 1976. But he has denied that mark 'P' in the attendance card is not in his hand. He has stated in his cross-examination that he is working in the factory since, 1976. He further argued that the owner of the respondent, who has come in the witness-box as MW-1 has admitted in his cross-examination that the ESI card of the workman which is Ex. W-4 bears their Code Number. He further admitted in his cross-examination that there is provision of the Provident Fund in the factory, and he does not know about this document whether it is correct or wrong. The workman's representative argued that the respondent's case is that the claimant is a labour of the contractor, but the contractor who has produced in the Court as MW-2 Shri Kuber Ram has stated in his statement that he is illiterate person and have no record. The record is maintained by the respondent as this Court has seen at the time of the evidence that the whole record was produced by the respondent which was said to be the record of the contractor. In fact they have given the name of the contractor but there was no contractor in the factory. It is just to spoil the carrier of the workman that they are employees of the contractor and the contractor even could not produce any licence for the contractorship in the Court. The contractor has stated in his cross examination that previously he was the employee of the respondent and he was the Labour Leader at that time. He has stated in his cross-examination that the record was maintained by M/s. D.R. Kumar and not by himself and he did not know about any ESI or P.F. He has further stated that he never deducted any provident fund of ESI from the Labour's salary which clearly shows that the case of the respondent is quite false and cannot be believed. He further argued that the respondent has produced Shri Man Singh as MW-3 who has admitted the attendance card and identity card which are produced by the claimant. He has admitted in his cross-examination the code Number of the E.S.I. He further argued that the respondent produced MW-4 Shri Sudharshan Kumar Jain who was previously the partner of the firm who has signed the identity card Ex. W-3 to say that it did not bear the signature. He has stated in his statement that Ex. M-1 the agreement between the contractor and the factory contains his signature and the signature of the contractor and has further stated that the identity card did not bear his signature. But how it can be believed when the respondent has identified the signature of Shri Sudharshan Kumar Jain on the identity card. The claimant has also produced the copy of the letter from Deputy Regional Provident Fund Commissioner, dated 23rd May, 1981 in which the Provident Commissioner has asked to enquire about the Provident Fund of the workman. The copy is Ex. W-7 which is clear proof of the claimant as employee of the respondent. This all evidence documentary and witness of the respondent shows the relationship of the claimant and the respondent that the claimant was the employee of the respondent and was terminated illegally.

After hearing the arguments of both the sides and going through the file, I am of the view that the workman has proved the case beyond doubt. The respondent cannot say that he was not the employee of the respondent after seeing seven documents produced by the claimant and issued by the respondent and admitted by the respondent witness. The respondent has failed to prove that the workman was the employee of the contractor. At the time of evidence the whole record of the contractor, was produced by the respondent and not by the contractor himself shows that the respondent took this plea to spoil the case of the workman. The contractor has stated in his cross-examination that he is illiterate person and maintained no record of the labour. He also admitted in his cross-examination that he never deducted any E.S.I. or P.F. from the salaries of the labour. It shows that this workman was not workman of the contractor of the respondent. So this issue is decided in favour of the workman and against the respondent.

Issue No. 2.—Issue No. 2 is as per reference. After deciding issue No. 1 in favour of the workman there remains one question of termination, whether it was justified or proper. When it was decided by me that the workman was the employee of the respondent and according to the statement of the workman he was terminated from service from 18th February, 1981 without any notice or charge-sheet. It is believed that he was terminated on that date and he was terminated without any justification given by the respondent. The respondent has given no evidence for the termination as they have taken the plea that there is no relationship with the workman and after holding that the workman was the employee of the respondent the termination was unjustified and improper and the workman is entitled for his reinstatement with full back wages and continuity of service.

Dated, the 16th February, 1982

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 467, dated 19th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARISINGH KAUSHIK),
Presiding Officer,
Labour Court, Haryana, Faridabad.

H.L. GUGNANI,
Commissioner and Secretary, Government,
Haryana Labour Employment
Department.

TOWN AND COUNTRY PLANNING DEPARTMENT

The 18th May, 1982

No. 5DP-82/7804.—In exercise of the powers conferred by sub-section (c) of section 2 of the Haryana Development and Regulation of Urban Area Act, 1975 and all other powers enabling him, the Governor of Haryana is pleased to declare the Urban area covering the revenue estate of village Mangar, District Faridabad and specified in the Schedule of boundaries given below and shown in the plan appended hereto, Drawing No. DTP (F) 861/82, dated the 4th March, 1982 to be an Urban area for the purposes of the said Act.

“Schedule of boundaries for the Urban Area covering Village Mangar, District Faridabad”

All revenue Khasra Nos. within the revenue estate boundaries of village Mangar except Khasra Nos. 85, 87, 89 to 92 which already lie in Urban Area, Faridabad

A. K. SINHA,
Commissioner and Secretary to Government, Haryana,
Town and Country Planning Department.

See Map 1347 Page